IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-07-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

WRIT PETITION NO.24050 OF 2007

S. Narasiman
S/o. Sankaraiah .. Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep. by its Secretary,
   Higher Education Department,
   Fort St. George,
   Chennai 600 009.

2. The Secretary,
   Tamil Nadu Engineering Admissions,
   Anna University,
   Chennai 600 025. .. Respondents

Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents to forthwith delete the names of the students who have already applied for and got admission to a professional course in the previous academic year and have now applied for admission to Engineering courses 2007-2008 and students who have written the Higher Secondary Course examinations prior to 2006-2007 from the ranking list for admission to Engineering courses for the academic year 2007-2008 and consequently to revise the ranking list for admission to Engineering Courses for the academic year 2007-2008.

For Petitioner : Mr.N.G.R. Prasad for
Mr.M. Christopher

For Respondents : Mr.N. Kannadasan
Addl. Advocate General
Assisted by
Ms. Dakshayani Reddy
Govt. Advocate (Education)

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J U D G M E N T

P.K. MISRA, J

The present writ petition has been filed as a Public Interest Litigation for issuing a Writ of Mandamus directing the respondents, namely, the State of Tamil Nadu and the Secretary, Tamil Nadu Engineering Admissions, Anna University, to delete the names of the students who have already applied for and got admission to a professional course in the previous academic year and have now applied for admission to Engineering courses 2007-2008 and students who have written the Higher Secondary Course examination prior to 2006-2007 from the ranking list for admission to Engineering courses for the academic year 2007-2008 and consequently to revise the ranking list for admission to Engineering courses for the academic year 2007-2008.

2. Admission to Professional Courses such as Medicine, Engineering, Dental, Agriculture, etc., were hitherto being effected on the basis of the marks obtained in the qualifying examination i.e., Plus 2 or Higher Secondary Course and Common Entrance Test in the proportion of 200:100. However, as per the Tamil Nadu Admission in Professional Educational Institutions Act, 2006 (Act 3 of 2007), the State Legislature enacted a legislation abolishing Common Entrance Test. Validity of such Act, abolishing the Common Entrance Test, was challenged and has been upheld, subject to certain modifications relating to Architecture course, in the decision reported in 2007(2) CTC 677 (Minor S. Aswin Kumar, Rep. by his father and natural guardian Mr.P.Shanmuga Nathan Vs. State of Tamil Nadu, Rep. by its Secretary to Government, Higher Education Department, Fort St. George, Chennai-9 and others). As per Act 3 of 2007, admission to Professional courses such as Medicine, Engineering, Dental, Agriculture, etc., shall now take place on the basis of marks obtained in the relevant subjects, i.e., Physics, Chemistry and Mathematics for Engineering course.

3. The first contention of the petitioner is to the effect that syllabus for Higher Secondary Course has been changed from the academic year 2005-2006. In other words, those who had appeared in Plus 2 examination in 2006 had studied different syllabus, whereas those who have passed such examination in 2007 have studied under new syllabus. According to the petitioner, new syllabus is very tough. It is submitted that without the method of any equalization, the students who had passed the qualifying examination before 2007, should be made ineligible for admission to Engineering course.

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4. Petitioner has given a comparative chart of number of students who have secured 100% marks in different subjects such as Mathematics, Physics and Chemistry. Such chart indicates that in the examination held in March, 2005, 2773 students had got 100% marks in Mathematics, 1416 students had got 100% marks in Physics and 1416 students had got 100% marks in Chemistry, whereas corresponding number in the year 2006 was 849, 17 and 119 respectively and number of such students in the year 2007 in three subjects is 1,568, 217 and 145 respectively. Similarly it has been stated that in Physics, 1940 students got 199 out of 200 marks in the examination held during 2005, whereas number of students got 199 out of 200 was 95 in the examination held in March, 2006 and 473 in the examination held in March, 2007. In Chemistry, 1940 students got 199 out of 200 in the examination held during the year 2005, whereas only 282 students got similar marks in March, 2006 and 317 students got similar marks in March, 2007. On the basis of such statistics, it is contended that because of change in syllabus and the examination becoming tougher, less and less number of students have secured 100% marks in March, 2007 and therefore the students who have passed examination held during the previous years should not be allowed to compete with the students who have passed in March, 2007. It is submitted by him that since there was change in syllabus, in the absence of any method adopted for equalization, it would be arbitrary to allow students who had passed in the previous years to get admission on the basis of such high marks by competing with the students of the year 2007, who because of change in syllabus have secured less marks. This according to the learned counsel violates the principle of equality which has already been recognized in several decisions relating to admission, more particularly in 2007(2) CTC 677 (cited supra).

5. The second contention of the petitioner is to the effect that whatever may be the status of the students of the previous years, who had not been admitted to professional courses during earlier years, at least those students who had got admission to professional courses should be prevented from seeking selection on the basis of marks obtained by them in the qualifying examination held during the earlier years. Learned counsel for the petitioner has placed strong reliance upon the fact that for admission to MBBS Course the State Government has conceded to such a position as is apparent from the unreported judgment of the Division Bench in W.P.Nos.22787, 23173, 23326, 23328 of 2007 disposed of on 10.7.2007.

6. Learned Additional Advocate General appearing for Respondents 1 and 2 has submitted that the contention to the effect that all the students of previous years should be made ineligible on the ground of so called change in syllabus cannot be accepted. He has further submitted on the basis of instructions that the concession, which was recorded in respect of admission relating to MBBS/BDS, cannot be made applicable for admission to Engineering courses. It is submitted by him that for admission to MBBS/BDS course, for atleast past 20 years a restriction had been imposed and included in the prospectus making the students undergoing any of the professional courses ineligible to apply at the time of

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applying for MBBS/BDS Course and similarly the students who had already joined in a professional course and discontinued the course on any ground after six months, were also made ineligible.

7. As a matter of fact, it was not disputed even by the learned counsel for the petitioner that such restrictions have all along been in vogue at least for the last 20 years for admission to MBBS/BDS Course, but an exception has been sought to be made during the current year 2007-2008. It is this change in the policy relating to eligibility criteria for MBBS/BDS in the year 2007-2008 was the subject matter of dispute in the writ petitions disposed of by the High Court and the High Court by relying upon the earlier Division Bench decision of this Court in 1984 WLR 249 (SUGANTHI, K. v. STATE OF TAMIL NADU) and the Full Bench decision of the Bombay High Court reported in AIR 1995 Bombay 1 (KOMAL K. CHITNIS v. DIRECTOR, MEDICAL EDUCATION AND RESEARCH, BOMBAY) and on the basis of the concession given by the learned Advocate General, held that the restriction imposed during the academic session 2006-2007 should also be followed during the present year.

8. Learned Addl. Advocate General has pointed out that so far as admission to MBBS/BDS course is concerned, the change in policy did not find favour with the High Court. However, for the admission to Engineering Courses there was never any such restriction imposed during last 20 years or so. It is submitted by him that since the demand for seats for admission to MBBS and BDS courses is much higher, the policy, which was followed for admission to such courses for 20 years, was possibly justified; whereas such a policy need not be followed for admission to Engineering Courses keeping in view the fact that number of seats available for Engineering Courses far exceeded number of applicants during last several years.

9. After bestowing our anxious consideration to the contentions raised, we have no hesitation in rejecting the contentions raised by the learned counsel for the petitioner.

10. Petitioner is seeking for a writ of Mandamus directing the Government to change its policy of admission relating to Engineering Courses. The main attack of the learned counsel for the petitioner is based on the perceived possible inequality. He has submitted that unequals are being treated as equals which amounts to discrimination. Learned counsel has submitted that as during the previous years number of students getting 100% marks in the relevant subjects such as Mathematics, Physics and Chemistry being comparatively higher would clearly put the students of this year at a disadvantage and such disparity in the number of students securing high marks, according to the learned counsel, is due to change of syllabus.

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11. On the materials placed before us, we are not in a position to accept such a bald statement made by the petitioner. We find that in fact number of students who got 100% marks in Mathematics, Physics and Chemistry in the examination held in March, 2006 was considerably lower than number of such students who got 100% marks in March, 2007. Therefore, the basic assumption that syllabus for the year 2007 was tougher as compared to the previous years on the face of it sounds hollow. It is of course true that number of students securing 100% marks in Mathematics, Physics and Chemistry in the year 2005 was higher as compared to number of students who got such 100% marks during the year 2007. That by itself is not even prima facie sufficient to come to the conclusion that there is any violation of principle of equality. Even assuming that there has been some changes in the syllabus, on this basis alone we are not prepared to jump to the conclusion that the students who have passed during the earlier years should not be allowed to be selected on the basis of marks obtained in the qualifying examination and the admission should be confined to the students who have passed in the year 2007. If such an extreme view is to be taken, future of the students who had passed during the earlier years would be clogged for ever.

12. Even though ideally absolute equality is required to be achieved, in reality it is a myth. Even where only one examination is held by one institution during a particular year, it cannot be said that absolute equality is achievable because as of necessity the answer papers are to be examined by different examiners who would obviously have different yardsticks for evaluation. In this connection, one may recollect the observations made by Justice Krishna Iyer in (1979) 1 SCC 572 (STATE OF KERALA v. KUMARI T.P. ROSHANA AND ANOTHER). In the said matter, which arose out of a Full Bench decision of Kerala High Court. The direction given by the High Court for holding entrance examination on the footing that there was disparity in the standard of examination and evaluation was struck down by the Supreme Court in appeal, by observing:-

> "15. We are not impressed much with the surmise which colours the reasoning of the Full Bench and the learned Single Judge that there is such substantial difference in the pre-degree courses and evaluations between the sister universities within the same State that the breach of Article 14 by equal treatment of the marks unequally secured by examinees in the two universities may be spelt out. It is trite law that every inconsequential differentiation between two things does not constitute the vice of discrimination, if law clubs them together ignoring venial variances. Article 14 is not a voodoo which visits with invalidation every executive or legislative fusion of things or categories where there are no pronounced inequalities. Mathematical equality is not the touchstone of constitutionality. This Court in Triloki Nath Khosa [(1974) 1 SCC 19] cautioned:
>
> "Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and

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straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

In the same ruling there was a caveat entered by Chandrachud, J. (as he then was) against "a charter for making minute and microcosmic classifications". What is more, a large latitude is allowed in this area to the State to classify or declassify based on diverse considerations of relevant pragmatism, and the judiciary should not "rush in" where the executive warily treads. . . . We are aware that there are Universities and Universities, that gross divergences among them exist affecting the quality of the teaching and the marking, the anomalies of grading and the absurdity of equating the end products on the blind assumption that the same marks mean the same excellence. But not glib surmises but solid facts supply the sinews of discriminatory inequality or equality.

...

17. The vagarious element in marking and moderation of marks may be a fact of life, but too marginal to quality for substantial difference unless otherwise made out. Indeed, there may be differences among the colleges under the same university. Such fleeting factors or ephemeral differences cannot be the solid foundation for a substantial differentiation which is the necessary pre-condition for quashing an executive or legislative act as too discriminatory to satisfy the egalitarian essence of Article 14. The functional validation of the writ jurisdiction is an appropriate examination of the substantiality of the alleged disparity. We do not, however, proceed finally to pronounce on this point with reference to the two universities since nothing is available before us, or, for that matter, was before the High Court to warrant a fair conclusion on the issue. We are persuaded to make these observations for future guidance, so that academic schemes may not be struck down as arbitrary or irrational save where some sound basis has been laid."

(Emphasis added)

13. In fact the Full Bench decision of the Bombay High Court (supra) relied upon so much by the learned counsel for the petitioner had repelled in no uncertain terms a similar contention of excluding the students who had passed during the previous years. The Bombay High Court had observed :-

"23. As a matter of fact, the particular examination of a particular Board or University, irrespective of the fact as to in which year the candidate has passed the same; is always treated on par for all purposes. We find it impossible to subscribe to the view that the students passing the same examination in different years constitute different classes merely by virtue of the fact that they have given the same examination in different years. Even marginal difference in the curriculum or method f

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assessment or such other factors in respect of different years for the same examination would not be sufficient to categorise the students into different classes. . . ."

14. Keeping in view the sentiments expressed above, particularly in the decision of the Supreme Court, we are unable to persuade ourselves to come to a conclusion that a level playing field is not available and the students who have passed prior to 2007 should be deprived of an opportunity of pursing Engineering courses. For the purpose of granting relief to some of the students of the year 2007 likely to be affected, we cannot think of shutting the door for ever in respect of the students of preceding years. We do not find any rhyme or reason in such contention. In such view of the matter, the latter portion of the relief claimed by the petitioner to the effect that the students who had passed during the previous years should be made ineligible is required to be rejected.

15. The next contention is obviously inspired by the concession given in the matter relating to admission for MBBS/BDS. Learned counsel for the petitioner has contended that such of the students, who had already taken admission during the previous years, may be in some less sought after subjects, should not be allowed to corner the seats in more cherish subjects available during the current year on the basis of the marks obtained during the examinations for the earlier years.

16. We have already noticed the contention raised by the learned Addl. Advocate General that so far as admission to MBBS/BDS is concerned, for more than 20 years such a course was being adopted and only during this year the Government has made a slight variation. It is rightly submitted by the learned Addl. Advocate General that since such restrictive conditions were all along existing, those students, who had taken admission to professional course in spite of knowledge of such restrictive conditions, did not have any right nor expectation far less legitimate expectation of seeking admission to MBBS/BDS course. In fact in the unreported decision in W.P.No.22787 of 2007 & others, the Division Bench has recognized this aspect as apparent from the observation made in paragraph 8 of the judgment. However, according to the learned Addl. Advocate General, the concession, which was given in the said case on its own peculiar facts, cannot be extended, more particularly by issuing a writ of Mandamus directing the Government to change its policy. On the other hand, it has been rightly submitted by him that such policy of allowing students from any previous year, whether admitted to any professional courses or not, to seek admission to Engineering Courses having been followed consistently for atleast two decades, it can be said that such students, including the students who had taken admission to some less sought after streams of Engineering, had legitimate expectation of pursuing a better prospect in life by seeking admission to a better stream. Merely because Common Entrance Test has been abolished this year, it should not have the effect of depriving such students in any existing institution the opportunity of seeking admission on the basis of marks obtained by them. If the contention raised by Mr.N.G.R. Prasad is taken

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to its logical end, a student who had secured higher marks in the concerned subjects may be denied an opportunity of getting admission to a better stream this year merely because he had willy-nilly taken admission to some Engineering Course during the previous years as compared to a student who had secured less marks during the previous years and had failed to secure admission. A student who was unable to get admission during the previous years does not become more meritorious merely because a student who was found more meritorious than him had got admission to some professional course. The same logic is also applicable to less meritorious students who have passed out this year.

17. The matter can be viewed from another angle. Article 19(1)(g) of the Constitution empowers every citizen to practice any profession or to carry on any occupation. Obviously for the purpose of pursuing any profession, a student is required to pursue a professional course and has a right to pursue such education which is best suited for his talent and also for his future prospects. His right under Article 19 or may be even under Article 21 would be violated, if he would be deprived of such option to pursue any academic course merely because he has taken admission during a previous year, not knowing what the future holds for him. If a better opportunity comes to him during subsequent years, it would be too unjust to deprive him of such opportunity. There are many instances where many eminent people have changed their education midstream and subsequently shone in the changed field of education/profession.

18. The decision relating to MBBS students can be clearly distinguished by observing that for such students already such a restriction had been in vogue for more than 20 years and there was a departure in the policy, which was found to be arbitrary. On the other hand, so far as the Engineering students are concerned, the consistent policy throughout has been to permit such existing students pursuing any professional course to join in Engineering course, who is otherwise eligible for.

19. The submission so glibly and even forcefully putforth by the learned counsel on the basis of doctrine of wastage of a seat, if accepted for admission to all professional courses irrespective of ground realities, has its own inherent contradictions and may leave many questions unanswered. Why should a student of previous years who could not get selected because of less merit and had joined a "general course" as distinct from "professional course" be allowed to join professional course in later years? Is there no wastage of a general seat if he switches over to some professional course subsequently ? If he is allowed to change his volition and better his future prospects by seeking admission to a professional course in later years, a student who was found more meritorious and selected for some professional course be deprived of such similar opportunity? Should the Hobson's choice made by such a student of taking admission to some professional course during a particular year rather than taking admission to a "general course" be held against him for all times to come ?

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20. It is no doubt true that the Courts have recognized the right of the State to lay down its policy and such restrictions when imposed have been found reasonable, but obviously because of peculiar fact situation and background materials. Ultimately it is for the State to lay down the relevant principles or guidelines. Jurisdiction of the Courts is limited to the extent of examining the legality of such provisions, not to sit in judgment over relative merit or demerit of such provisions unless such provisions are found to be wholly arbitrary.

21. In the decision reported in AIR 1964 SC 1823 (R. CHITRALEKHA v. STATE OF MYSORE AND OTHERS), the Supreme Court has observed:-

> "Once it is conceded, and it is not disputed before us, that the State Government can run medical and engineering colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it . This is a power which every private owner of a college will have, and the Government which runs its own colleges cannot be denied that power ."

22. In AIR 1968 SC 1012 (RAJENDRAN v. STATE OF MADRAS), the Supreme Court had recognised the right of the Government to frame rules relating to admission to colleges controlled by it. Similarly, in AIR 1970 SC 35 (CHITRA GHOSH v. UNION OF INDIA), it was recognized that it is for the Government to prescribe the eligibility criteria.

23. In AIR 1971 SC 2560 (THE STATE OF ANDHRA PRADESH AND ANOTHER v. LAVU NARENDRA NATH AND OTHERS), the principles laid down in AIR 1964 SC 1823, AIR 1968 SC 1012 and AIR 1970 SC 35 (cited supra) were again reiterated. Moreover, in the aforesaid decision, in paragraph 18, it was also recognized that a student may have the right or "liberty" under Article 21 of the Constitution to seek admission, however, subject to any rules or regulations governing the field.

Such observation of the Supreme Court in Chitralekha's case was cited with approval in T.M.A. Pai Foundation's case [(2002) 8 SCC 481].

24. As per the aforesaid decisions, the Government is free to lay down its own policy, of course within permissible parameters of the Constitution. The Government in its wisdom for the last so many decades had followed a policy of admitting a student in Engineering course, even though such a student was admitted to any other professional course including any stream of Engineering course, which remained unchallenged all these years. Such policy is also continued this year. There is nothing intrinsically arbitrary in such a policy. In the Full Bench decision of the Bombay High Court and the Division Bench decision of this Court, validity of a policy excluding certain types of students was in question and in the peculiar facts available, the Courts found that there was a reasonable basis for such classification. In the Division Bench decision of this Court in W.P.No.22787 of 2007 & others, such policy was found to be in existence for more than 20 years and when it was suddenly

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changed, the Court found it be unwise, obviously on a different factual scenario.

25. For the reasons indicated, we are unable to persuade ourselves to accept the contention of the learned counsel for the petitioner that by following the said decision of the Government relating to admission to MBBS/BDS, a Mandamus should be issued to the Government to change its policy.

26. For the aforesaid reasons, we do not find any merit in this writ petition, which is accordingly dismissed without any order as to costs.

dpk

Sd/-
Asst.Registrar

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Sub Asst.Registrar

To

1. The State of Tamil Nadu,
   Rep. by its Secretary,
   Higher Education Department,
   Fort St. George,
   Chennai 600 009.

2. The Secretary,
   Tamil Nadu Engineering Admissions,
   Anna University,
   Chennai 600 025.

+1 cc to the Government Pleader Sr.No.43769.

+1 cc to Mr.M.Christopher, Advocate Sr.No.43617.

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